



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MEMORANDUM

TO: Rick Ingraham, Part C Coordinator
California Department of Developmental Services

THROUGH: Ruth Ryder, Division Director *Ruth Ryder*
Division of Monitoring and State Improvement Planning (MSIP)
Office of Special Education Programs (OSEP)

Larry Ringer, Associate Division Director, MSIP *Larry Ringer*

FROM: Rhonda Spence, OSEP State Contact for California

SUBJECT: Specific Part C Assurance for Federal Fiscal Year (FFY) 2010

DATE: June 29, 2010

The Office of Special Education Programs (OSEP) has reviewed California's Federal Fiscal Year (FFY) 2010 grant application under Part C of the Individuals with Disabilities Education Act (IDEA Part C) and has identified issues requiring additional action in order to make the application fully consistent with IDEA Part C requirements. This memo confirms review and approval of amendments to California's IDEA Part C FFY 2009 grant application and responds to California's IDEA Part C FFY 2010 grant application submitted by the California Department of Developmental Services (DDS) on May 6, 2010.

DDS submitted amendments to Section II.A. of California's FFY 2009 IDEA Part C application dated June 22, 2009 (and received on June 29, 2009) and October 1, 2009 (and received on October 22, 2009). These amendments were revisions to the State's system of payments under IDEA sections 632(4)(B) and 637(a)(3)(A) (regarding use of private insurance to pay for IDEA Part C services) and State's eligibility criteria under IDEA section 632(5)(b)(i) (regarding no longer serving at-risk children effective October 1, 2009). OSEP requested clarification of those policies and, following OSEP's February 24, 2010 teleconference with DDS representatives, confirmed that OSEP approved the State's eligibility criteria, effective October 1, 2009. However, with respect to the State's system of payments policy regarding use of private insurance to pay for IDEA Part C services, the State must revise its policy to include a provision requiring parental consent prior to the disclosure of personally identifiable information to third parties related to the use of a parent's private insurance to pay for IDEA Part C services, consistent with 34 CFR §§303.402 and 303.460.

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2600

www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In addition, as documented in its IDEA Part C FFY 2009 grant letter, California provided OSEP with two assurances regarding its policies that had been inconsistent with Part C; specifically DDS had assured that it would revise its policies to: (1) resolve as a State complaint any complaint that alleges any violation of a Part C requirement (including complaints regarding Part C eligibility or services) under 34 CFR §303.510; and (2) ensure that mediation is made available to parties at any time (and not just when a due process hearing request is filed) to resolve disputes involving any matter related to IDEA Part C, consistent with IDEA section 639(a)(8) (which references the requirements in IDEA section 615(e)(1)). In its IDEA Part C FFY 2010 grant application, DDS provided in the procedural safeguards assurance in Section II.B.14. a completion date of 6/30/2010 to have procedural safeguards, as required by IDEA section 639 (including the applicable revisions to the complaint and mediation provisions). California submitted draft documents in June 2009, but did not submit additional documents with its FFY 2010 application, given that its regulations regarding procedural safeguards and related documents were still out for public comment during May and June 2010. Thus, OSEP has not received final policies to address the two specific assurances that were part of the State's FFY 2009 IDEA Part C grant regarding mediations and complaints.

OSEP reviewed the documents posted on DDS's web-site as of May 14, 2010 for final State rulemaking regarding procedural safeguards for the sole purpose of determining if California had addressed these two specific assurances. Specifically, OSEP reviewed the following documents posted as of May 14, 2010 and identified three issues. The documents reviewed include: (1) Parents' Rights: An Early Start Guide for Families (pp. 8-13); (2) California Code of Regulations §§52170, 52172, & 52173; and (3) Narrative explanations: (a) "Appeals, Complaints & Comments;" (b) "Early Start Mediation Conference Requests;" (c) "Early Start Due Process Hearing Requests;" (d) Early Start Compliance Complaints Process." The three issues that are directly related to the State's FFY 2009 specific assurances and which are still not addressed are—

- (1) In some documents,¹ the State's regulations and supporting documents limit mediation to matters involving an "alleged violation." The State must revise its regulations and/or supporting documents to be consistent with IDEA section 639(a)(9) and 615(e)(1) and 34 CFR §303.419(a), which requires that mediation be available regarding "any matter" under IDEA Part C. .
- (2) The State's regulations and supporting documents² appear to limit the scope of the complaint process to "any federal or state law or regulations governing the *provision of any early intervention services...provided through Part C*" of the IDEA. The State must clarify its regulation to be consistent with 34 CFR §303.510, which requires that the complaint process be available to resolve *any violation of a Part C requirement*.

¹ The following documents were reviewed for this issue: Parents' Rights: An Early Start Guide for Families, Revised 2010; Appeals, Complaints & Comments web page downloaded 5/14/2010; Early Start Mediation Conference Requests web page downloaded 5/14/2010; and Early Start Program – Mediation Conference Request Form web page downloaded 6/16/2010.

² Early Start Compliance Complaints Process web page downloaded 5/14/2010 and Early Start Complaint Investigation Request web page downloaded 6/16/2010.

- (3) Proposed California regulations 52170 (a) and (f)(2) and other documents³ are unclear whether the complaint procedures allow a party to file a complaint against “the State” or just a subset of parties within the State. The State must clarify its regulations and other documents to be consistent with 34 CFR §303.511(a)(1), which requires a complaint to include a statement that “the State” has violated a requirement of IDEA Part C and its applicable implementing regulations.

In order to receive its FFY 2010 IDEA Part C grant award, DDS will need to provide a specific written assurance to OSEP that the State will: (1) Complete the actions identified in this June 29, 2010 memorandum; (2) Ensure compliance in the interim throughout the FFY 2010 grant period; and (3) Send a memorandum to all early intervention service programs and providers and parents to inform them of these actions required by OSEP that affect the provision of early intervention services in the State under IDEA Part C.

Attached is assurance language that the State may use to meet the requirements addressed in this memorandum. Please submit the necessary assurance, dated and with the signature of an official who has authority to ensure compliance with the assurance, as soon as possible to avoid any delay in the State’s grant award.

Please feel free to contact Larry Ringer or mc if you have any questions or concerns.

Attachment

cc: Kala Surprenant

³ Early Start Compliance Complaints Process web page downloaded 5/14/2010 and Early Start Complaint Investigation Request web page downloaded 6/16/2010.

The California Department of Developmental Services (DDS) hereby specifically assures under Part C of the Part C of the Individuals with Disabilities Education Act (IDEA Part C) that it shall submit to OSEP by December 10, 2010:

- (1) Its revised California Code of Regulations §§52170, 52172, and 52173 to address the items in OSEP's June 25, 2010 Memorandum (regarding the mediation and complaint requirements in IDEA sections 615(e)(1) and 639(a)(8)) and applicable regulations in 34 CFR §§303.419; 303.510 through 303.512).
- (2) Its revised policy regarding parental consent prior to disclosure of personally identifiable information to third parties related to the use of private insurance to address the items in OSEP's June 29, 2010 Memorandum and to be consistent with the consent requirements in 34 CFR §§303.402 and 303.460;
- (3) A written assurance that the State has revised all documents referenced in OSEP's June 28, 2010 Memorandum including to address the items referenced in that Memorandum and analysis to be consistent with the mediation and complaint requirements in IDEA sections 615(e)(1) and 639(a)(8)) and applicable regulations in 34 CFR §§303.419; 303.510 through 303.512;
- (4) A memorandum that informs all DDS Part C staff, parents, and early intervention service programs and providers of the requirements of OSEP's June 29, 2010 memorandum; and
- (5) Ensure that the statewide system of early intervention required by IDEA Part C in 20 U.S.C. 1431 through 1444 (including IDEA sections 615(e)(1) and 639(a)(8)) and applicable regulations in 34 CFR Part 303 (including 34 CFR §§303.419; 303.510 through 303.512) will be in effect throughout the FFY 2010 grant period.